

SPECIAL CIVIL APPLICATION No 290 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

-----  
K C SHUKLA

Versus

NATIONAL INSURANCE CO LTD

-----  
Appearance:

MR AK CLERK for Petitioner

MR RAJNI H MEHTA for Respondents

-----  
CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/06/1999

ORAL JUDGEMENT

The petitioner was an employee of respondent No. 1-National Insurance Co. Ltd. till his retirement in 1995. In this petition filed in January, 1992, the petitioner has prayed for various reliefs. In the first place, the petitioner has challenged the charge sheet dated 26.9.1991 (Annexure "P") wherein it was alleged that during his service from 1961 to 1989, the petitioner had accumulated assets disproportionate to his disclosed

sources of income and had amassed huge assets to the tune of Rs.78,557/- and 63 grams of primary gold. The petition was admitted on 30.6.1992 and this Court granted interim relief restraining the respondent authorities from proceeding with the inquiry pursuant to the aforesaid charge sheet dated 26.9.1991. Thereafter, the petitioner was given ad-hoc promotion as Deputy Manager in the year 1993 and the petitioner retired in November, 1995.

2. The defence of the petitioner was that the assets worth Rs.78,000/- in question were acquired by the petitioner from his savings over a period of 28 years and that there was no question of any assets disproportionate to his disclosed sources of income. It was further contended by the petitioner that the assets in possession of the petitioner had also appreciated in value. As regards 63 grams of gold, the only allegation against the petitioner was that the petitioner should not have kept the gold in primary condition. The defence of the petitioner was that the gold belonged to the petitioner's wife. The petitioner's wife got her ornaments melted and got them in the form of primary gold pending conversion of that primary gold into new ornaments.

3. At the hearing of this petition, Mr AK Clerk, learned counsel for the petitioner has submitted that in the facts and circumstances of the case, on the face of it the allegations made against the petitioner in the impugned charge sheet dated 26.9.1991 could not be sustained and it could never be reasonably said that the assets are disproportionate to disclosed sources of income of the petitioner over a period of 28 years. It is also submitted that when the petitioner was due for promotion in 1987 and thereafter, one inquiry or another was being instituted against the petitioner.

4. Mr RH Mehta, learned counsel for the respondents submits that no decision is taken by the respondents as the departmental inquiry is still pending on account of the interim stay granted by this Court. He further submits that normally this Court would not interfere with the charge sheet without requiring the delinquent to face the departmental inquiry and that only when the final order is adverse to the delinquent that the same could be subject matter of a petition under Article 226 of the Constitution.

5. It is an admitted fact that although the CBI had carried out raid on the petitioner's premises in the year

1989, the CBI did not launch any prosecution against the petitioner on the basis of the aforesaid raid. It would be reasonable and safe to assume that if the CBI had found that the petitioner was guilty of possessing assets disproportionate to the petitioner's disclosed sources of income and that there was a prima facie case which could be proved in a Criminal Court, the CBI would have launched prosecution against the petitioner. The very fact that the raid was carried out in the year 1989, but no prosecution was launched against the petitioner in 1990 or 1991 or even thereafter, would go to prima facie indicate that the CBI did not find any such case against the petitioner on the basis of which the respondents would be justified in holding a departmental inquiry against the petitioner. Even otherwise, the relevant figures given in the charge sheet are as under :-

- i) Income from all known sources (For check period April 1961-March 1989)      Rs.9,45,902/-
- ii) Expenditure      Rs.4,16,260/-
- iii) Likely saving (i-ii)      Rs.5,29,642/-
- iv) Assets found in possession Rs.6,08,199/-
- v) Disproportion (iv-iii)      Rs. 78,557/-

Since the period covered was from April, 1961 to March, 1989 i.e. 28 years (meaning thereby 336 months) and the amount was Rs. 78,557/-, it would mean that the allegation made against the petitioner was that the petitioner was possessing assets disproportionate to his disclosed sources of income to the extent of Rs.234/- per month.

Considering the fact that the petitioner was an Assistant Manager with an Insurance Company and the income from all known sources was almost Rs.9.46 lacs, the savings of Rs.1810/- per month (Rs.6.08 lacs divided by 336 months) cannot be said to be disproportionate to his disclosed sources of income, as compared to the savings of Rs.1576/- per month (Rs.5.30 lacs divided by 336 months) as estimated by the respondents. Whether employee or his wife should keep the 63 gms. of gold (value Rs.20,000/-) in primary condition or in the form of ornaments could not be said to be a part of the alleged misconduct of having possessed disproportionate assets to the disclosed sources of income, particularly

when the petitioner is shown to have inherited gold ornaments in Succession Case No. 2/88 over and above the gold received by the petitioner's wife from in-laws and relatives and some gold was also shown to have been purchased by the petitioner from his disclosed sources of income.

6. An officer may choose to have a more modest standing of living than his colleagues. The income, expenditure and savings are not to be weighed by the department in golden scales. It is only when the assets of the delinquent or his savings are found to be significantly disproportionate to the disclosed sources of income after considering the standard of living, number of family members and various other aspects, then and then only it can be said that the employee is guilty of serious misconduct which would lead to an inference that the integrity of the officer was not above board.

In the totality of the facts and circumstances of the case and looking to the amount involved and also considering the the concept of misconduct of possessing disproportionate assets in the above perspective, no such inference could be drawn by any reasonable person against the petitioner as is done in the impugned charge sheet.

7. It is true that what is challenged in the petition is only the charge sheet and not any final decision taken by the employer at the conclusion of the departmental inquiry and that ordinarily this Court would not entertain the challenge to a charge sheet. However, in the peculiar facts and circumstances of the case and in view of the fact that the petitioner has already retired from service on reaching the age of superannuation in 1995, and considering the fact that all the retiral dues of the petitioner are withheld on account of the pending departmental inquiry, the Court has proceeded to entertain the challenge to the charge sheet at this stage. Having heard the learned counsel for the parties, it is held that even on the basis of the material on the strength of which the respondent issued the impugned charge sheet dated 26.9.1991 no reasonable person would come to the conclusion that the petitioner's assets worth Rs.78,000/acquired over a period of 28 years would amount to the petitioner committing the misconduct of having assets disproportionate to his disclosed sources of income. In this view of the matter, the charge sheet will have to be quashed and set aside.

8. In this petition, the petitioner has also challenged the order dated 27.9.1991 (Annexure "M")

confirming the order dated 17.8.1990 (Annexure "L") of the Disciplinary Authority for censure in respect of an incident of payment of an amount of Rs.38,500/- which, according to the respondents, was not payable as per the terms of the insurance policy. The petitioner has also prayed that the respondents be directed to treat the period of suspension of the petitioner from 5.6.1987 to 21.10.1988 as on duty and to grant the petitioner all the consequential benefits as if the suspension order was not passed in respect of the alleged misconduct which ultimately resulted into the aforesaid order of Censure only and, therefore, the order of suspension was not at all warranted.

9. It appears that the primary purpose of challenging the order dated 17.8.1990 and the appellate order is that the petitioner is more aggrieved by the period of suspension from 5.6.1987 to 21.10.1988 which is still being treated as suspension. In the facts and circumstances of the case, without going into the challenge to the order of censure against the petitioner passed on 17.8.1990 and confirmed by the appellate authority on 27.9.1991, it must be held that since the final order in the disciplinary proceedings resulted into a mere order of censure, the order of suspension was not warranted as suspension is to be resorted to in a case where even on the basis of preliminary inquiry, there is a case for dismissing, removing or compulsorily retiring the employee from service meaning thereby that the misconduct committed by the employee is so serious that it would result into imposition of a major penalty. However, considering the fact that the inquiry only culminated into merely an order of censure and that even after the aforesaid order of censure, the petitioner was promoted to the higher post of Deputy Manager in the year 1993, it must be held that the misconduct for which the order of censure was passed was not considered to be serious by the respondent authorities themselves. In this view of the matter, prayer "E" for directing the respondent authorities to consider the period of suspension of the petitioner from 5.6.1987 to 21.10.1988 as on duty and to grant the petitioner all consequential benefits as if the suspension order was not passed will have to be granted.

10. The petitioner has further prayed for a writ to direct the respondents to promote the petitioner to the post of Deputy Manager with effect from the date on which his immediate junior was promoted i.e. 22.2.1987. It appears that the petitioner's case was either not considered or the petitioner was not promoted to the post

of Deputy Manager in view of the pending departmental proceedings against the petitioner or pending preliminary inquiry against the petitioner. Looking to the fact that the charge sheet dated 26.9.1991 is being quashed by this judgement, ordinarily the petitioner might have been justified in pressing the claim for deemed promotion. However, in view of the fact that by order dated 17.8.1990 the petitioner was censured and that this Court does not sit in appeal over the decision of the departmental authorities whether a person is fit for promotion to the higher post, this court is not inclined to grant the aforesaid relief.

11. In any case, since the petitioner retired during pendency of the petition in 1995 and the grievance is being made by the learned counsel for the petitioner that all the retirement dues of the petitioner are not released by the respondent so far on account of the departmental inquiry launched as per the impugned charge sheet dated 26.9.1991 which is being quashed by this judgment, suitable directions are required to be issued to the respondents. In view of the fact that this Court is directing the respondents to pay the petitioner all the retirement benefits, it is obvious that upon payment of such amounts, the complaint filed by the petitioner before the Consumer Disputes Redressal Forum, Ahmedabad City will not survive.

12. In view of the above discussion, the petition is partly allowed and the following reliefs are granted :-

- (i) The impugned charge sheet dated 26.9.1991 at Annexure "P" to the petition is quashed and set aside and the respondents are restrained from initiating any proceedings against the petitioner on the basis of the allegations contained in the said charge sheet and the statement of imputation of misconduct annexed thereto.
- (ii) The respondents are further directed to treat the period of suspension of the petitioner from 5.6.1987 to 21.10.1988 as on duty and to grant the petitioner all the consequential benefits as if the suspension order was not passed at all. It is further directed that the respondents shall pay the petitioner the arrears of difference of salary for the period between 8.6.1987 and 21.10.1988 by treating the petitioner as on duty.
- (iii) The respondents are directed to pay the

petitioner all the retirement benefits including gratuity, leave encashment, commuted pension and to grant the petitioner regular pension in accordance with the relevant rules.

(iv) All the aforesaid amounts due and payable to the petitioner shall be paid by the respondents to the petitioner within three months from the date of receipt of a certified copy of this judgement or the writ of this Court, whichever is earlier, failing which the unpaid amounts shall carry interest at the rate of 12% per annum from today till the date of payment.

12. Rule is made absolute to the aforesaid extent only with no order as to costs.

Direct Service is permitted.

June 25, 1999 (M.S. Shah, J.)

sundar/-